UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LUCILLE RUBIN,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:00cv1657 (PCD)
	:
T. DONALD HIRSCHFELD,	:
HIRSCHFELD MANAGEMENT, INC.,	:
and GINETTE S. OWINGS,	:
Defendants.	:

RULING ON MOTION FOR PROTECTIVE ORDER

Plaintiff moves pursuant to FED. R. CIV. P. 26(c) for a protective order precluding inquiry into the third-party business relationships of plaintiff or of Walter Rubin, her husband. The motion for a protective order is granted.[1]

I. BACKGROUND

Between 1974 and 1996, plaintiff and defendant T. Donald Hirschfeld, among others, owned a shopping center. In 1996, the parties formed RH Taylorville, LLC ("RH Taylorville"), a limited liability company. On August 1, 1996, the parties entered into an Operating Agreement through which defendant Hirschfeld Management, Inc. was appointed manager of RH Taylorville. On August 29, 2000, plaintiff filed a five-count complaint alleging that defendants breached the Operating Agreement by charging a fee for the management of RH Taylorville, breached a fiduciary duty owed to her by charging the fee, defrauded her by representing that no compensation would be sought for the

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[1] Defendants filed, in response to the motion for a protective order, a memorandum in opposition to the motion and a motion to compel responses to interrogatories and document requests. As plaintiff has not yet been afforded the opportunity to file a motion in opposition, a ruling on the motion to compel will not issue at this time.

management services, and violated the Connecticut Unfair Trade Practices Act ("CUTPA"), CONN. GEN. STAT. § 42-110a *et seq.*, through the charging of fees in connection with the management and operation of RH Taylorville. Plaintiff also sought judicial dissolution of RH Taylorville. Defendants, in their answer, claimed lack of subject matter jurisdiction, failure to state a claim for which relief can be granted, failure to include a necessary party, and that the claims were barred by provisions of the Operating Agreement. Defendants counterclaimed for fees authorized under the Operating Agreement and unjust enrichment for services rendered in management of the property. Plaintiffs deny both counterclaims.

On September 18, 2001, defendants served plaintiffs interrogatories and requests for document production. On November 1, 2001, plaintiff responded to the discovery requests. On December 21, 2001, plaintiff supplemented her response to the request in response to deficiencies identified by defendants. Defendants now seek a protective order precluding inquiry into the third party business relationships of plaintiff or of Walter Rubin, her husband.

II. STANDARD

"Where . . . the [discovery is] relevant, the burden is upon the party seeking . . . a protective order to show good cause." *Penthouse Int'l, Ltd. v. Playboy Enters.*, 663 F.2d 371, 391 (2d Cir. 1981) (citation omitted); *see also* FED. R. CIV. P. 26(c); *Dove v. Atl. Capital Corp.*, 963 F.2d 15, 19 (2d Cir. 1992) (burden is on moving party to show good cause). FED. R. CIV. P. 26(c), however, "is not a blanket authorization for the court to prohibit disclosure of information whenever it deems it advisable to do so, but is rather a grant of power to impose conditions on discovery in order to prevent injury, harassment, or abuse of the court's processes." *Bridge C.A.T. Scan Assocs. v. Technicare*

Corp., 710 F.2d 940, 944-45 (2d Cir. 1983).

III. DISCUSSION

Plaintiff argues that defendants may not inquire into her or her husband's business affairs with third parties as such information is irrelevant to the present claims. Defendants respond that plaintiff's interpretation of the allegations unduly narrows the claims and that the information sought is relevant.[2]

In moving for a protective order, plaintiff must establish good cause for such an order if the requested discovery is relevant. *Penthouse Int'l, Ltd.*, 663 F.2d at 391. Defendants, as the parties seeking discovery, must first establish that the discovery sought is relevant to the claims and defenses plead. *See* FED. R. CIV. P. 26(b)(1). "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." FED. R. EVID. 401.

The claims and counterclaims alleged consist of the failure of one or both sides to conform to duties established by the Operating Agreement for the management of RH Taylorville. Under Connecticut law,

> A contract is to be construed as a whole and all relevant provisions will be considered together. . . . In giving meaning to the terms of a contract, . . . a contract must be construed to effectuate the intent of the contracting parties . . . . In ascertaining intent, we consider not only the language used in the contract but also the circumstances surrounding the making of the contract, the motives of the parties and the purposes which they sought

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[2] Defendants also contend that plaintiff lacks standing to move for a protective order precluding inquiry into her husband's business affairs. Although plaintiff's husband, as "the person from whom discovery is sought," FED. R. CIV. P. 26(c), could move for such an order, defendants mischaracterize the basis for seeking the order. Plaintiff seeks to preclude the introduction of irrelevancies against her as a party, and thus has standing to do so.

> to accomplish. . . . The intention of the parties to a contract is to be determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. The question is not what intention existed in the minds of the parties but what intention is expressed in the language used. . . . This is so where the parties have their agreement in writing . . . . In interpreting contract items, [it has been] repeatedly stated that the intent of the parties is to be ascertained by a fair and reasonable construction of the written words and that the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms.

Barnard v. Barnard, 214 Conn. 99, 109-10, 570 A.2d 690 (1990) (citations omitted; internal quotation marks omitted).[3]

In their memorandum in opposition, defendants cannot establish the relevancy of the discovery sought to any claim in this matter. There appears to be no dispute that this case centers on a single agreement between the parties and a single piece of property. Defendants have not shown the relevancy of plaintiff's business relationships with nonparties to any claim or defense at issue here. Defendants similarly have not established how the business relationships of plaintiff's husband, who is not a party to this case, have any bearing on the agreement at issue, to which he is not a party. Absent such a showing, defendants may not inquire into the third-party business relationships of plaintiff or of her husband.

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[3] The breach of fiduciary duty, CUTPA and fraud claims are limited to the duties created by the Operating Agreement. Neither defendants nor plaintiff appear to argue that the claims encompass a broader dispute. The parties disagree only to the scope of permissible discovery for that dispute.

IV. CONCLUSION

Plaintiff's motion for a protective order (Doc. 80) is **granted**.

SO ORDERED.

Dated at New Haven, Connecticut, January ___, 2002.

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Peter C. Dorsey
United States District Judge